IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 7 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

ARVIND MILLS LTD.

Appearance:

1. INCOME TAX REFERENCE No. 7 of 1987

MR BB NAIK with MR MANISH R BHATT for Petitioner No. 1

MR MANISH J SHAH for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 18/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue,

various questions are referred for the opinion of this Court in respect of assessment years 1980-81 to 1982-83.

2. We have heard Mr BB Naik, learned counsel for the revenue and Mr MJ Shah, learned counsel for the respondent-assessee.

3. For all the three assessment years, the following common question is referred :-

> "Whether, in law and on facts, the Appellate Tribunal is right in confirming the view taken by the CIT(A) that reimbursement of medical expenses, gratuity paid to Managing Director, cash payment of house rent allowance to Managing Director and personal insurance premium paid for Managing Director cannot be considered for computing disallowance u/s. 40(c) of the Income-tax Act, 1961 ?"

As far as the reimbursement of medical expenses and personal accident insurance premium paid for the Managing Director are concerned, in the case of Gujarat Steel Tubes Ltd. vs. CIT, 210 ITR 358 and in CIT vs. Ambica Mills Ltd., 236 ITR 921, this Court has concluded the controversy in favour of the revenue and against the assessee. We accordingly hold that the reimbursement of medical expenses and personal accident insurance premium paid for the Managing Director have to be considered for computing disallowance under Section 40(c) of the Income-tax Act, 1961. We accordingly answer this part of the question in favour of the revenue and against the assessee.

As regards the gratuity paid to the Managing Director, in CIT vs. Fenner (India) Ltd., 241 ITR 645, the Madras High Court has held that Section 40(c) of the Income-tax Act, 1961, would not take within its ambit one-time payments like payment of gratuity. Though the gratuity is regarded as salary for the purposes of section 17 of the Act for the purpose of assessment of the same in the hands of the employee who is in receipt of the gratuity, the said amount of gratuity cannot be regarded as remuneration, benefit or amenity to the director within the meaning of section 40(c). The payment of gratuity which is not relatable to a particular year of service, which would be payable on the completion of continuous years of service and which is not a periodic payment, cannot be regarded as falling within the scope of section 40(c) of the Act warranting

the disallowance under the said provision. Similarly, the Bombay High Court has also taken the same view in CIT vs. Colgate Palmolive (India) Pvt. Ltd., 210 ITR 770.

We are in respectful agreement with the aforesaid view of the Madras and Bombay High Courts. We accordingly answer the question in so far as it pertains to the gratuity paid to the Managing Director, in the affirmative i.e. in favour of the assessee and against the revenue.

Coming to the cash payment of house rent allowance to the Managing Director, the learned counsel for the revenue fairly states that the controversy is now concluded by the decision of the Apex Court in CIT vs. Mafatlal Gangabhai and Co. (P) Ltd., 219 ITR 644.

We accordingly answer this question in the affirmative i.e. in favour of the assessee and against the revenue.

4. The Tribunal has also referred the following common question for assessment years 1980-81 to 1982-83 :-

"Whether in law and on facts the Appellate Tribunal is right in confirming the view taken by the CIT(A) that the amount of Rs.2,56,006/- paid to Metture Beardsell Ltd. for the use of trade mark `Tebilised' was an allowable deduction u/s. 37 of the Act ?"

The learned counsel for the revenue fairly states that the controversy raised herein is concluded in favour of the assessee by the decision of this Court in the case of CIT vs. Ashoka Mills Ltd., 218 ITR 526.

We accordingly answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

5. The following two questions are referred for assessment year 1981-82 :-

"1. Whether, in law and on facts, the assessee is entitled to extra-shift allowance on exhaust fan ?

2. Whether, in law and on facts the expenditure of Rs.55,056/- incurred in connection with issue of bonus shares was

allowable ?"

As regards the question of extra shift allowance on exhaust fans, the learned counsel for the revenue strongly relies on the provisions of Appendix I, Part I (Rule 5) to the Income-tax Rules, 1961 providing that the extra shift allowance shall not be allowed in respect of, inter alia, the following items of machinery and plant to which the general rate of depreciation of 10 per cent applies :-

"(1) Electrical machinery - Switch-gear and instruments, transformers and other stationary plant and wiring and fittings of electric light and fan installations."

In view of the aforesaid clear statutory provisions, the extra shift allowance shall not be allowed on exhaust fans and the same view has been taken in ITR No. 27 of 1984. We accordingly answer this question in the negative i.e. in favour of the revenue and against the assessee.

Coming to the question about the expenditure incurred in connection with issue of bonus shares, the learned counsel for the revenue relies on the decisions of this Court in Gujarat Steel Tubes Ltd. vs. CIT, 210 ITR 358 and in CIT vs. Ajit Mills Ltd., 210 ITR 658.

Having gone through the aforesaid decisions laying down that the expenses incurred in connection with the issue of bonus shares are incurred by the Company for its permanent structure and are directly connected with the acquisition of capital and advantages of an enduring nature, we are of the view that the expenditure of Rs.55,056/- incurred in connection with issue of bonus shares was not allowable as a revenue expenditure. We accordingly answer this question in the negative i.e. in favour of the revenue and against the assessee.

6. Coming to the last question which the Tribunal has referred for assessment years 1981-82 and 1982-83, the same reads as under :-

"Whether in law and on facts cash payment of house rent allowance to the employees could be considered for disallowance u/s. 40A(5) of the I.T. Act, 1961 ?"

The learned counsel for the revenue fairly states that the controversy is concluded in favour of the

assessee by the decision of the Apex Court in CIT vs. Mafatlal Gangabhai and Co. (P) Ltd., 219 ITR 644.

We accordingly answer this question in the negative i.e. in favour of the assessee and against the revenue.

The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-